IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.MC.No. 569 of 2006()

AGAINST THE ORDER DATED 07/11/2005 IN CMP 4121/2005 IN CC.49/2002 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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PETITIONER: ACCUSED

K.RAGHAVAN, S/O.KUMARAN,
OTHAYOTH HOUSE, AYANCHERY DESOM,
PONMERI PARAMBIL, VILLIAPPALLI P.O.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS: COMPLAINANT AND STATE

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1. A.ANILKUMAR, S/O.LATE P.V.GOVINDAN,
"MEENA", KARAPARAMBA P.O., KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR
SRI.K.PRAVEEN KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.569 OF 2006

Dated this the 6th day of December, 2006.

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. At the stage of defence, the petitioner wanted the cheque to be sent to the hand writing expert for comparison. The obvious contention of the petitioner is that it was a signed blank cheque that was handed over and the complainant is misutilising the cheque to stake an untenable claim. The application was opposed. The learned Magistrate by the impugned order held that the discretion under Section 254 (2) Cr.P.C does not deserve to be invoked in favour of the petitioner. Accordingly, the learned Magistrate proceeded to pass the impugned order.

2. The learned counsel for the petitioner fairly concedes that there is a discretion for the Magistrate under Section 254(2) Cr.P.C. The learned counsel for the petitioner submits that when the petitioner, at his expense, is willing to get the comparison conducted by the expert, there is no reason why the advantage of such expert opinion should be denied to the petitioner.

3. It is trite that merely for the asking, a cheque need not be sent to the expert in a prosecution under Section 138 of the N.I Act. Facts of each case will have to be appreciated and the purpose for which such comparison is sought, will have to be considered by the court. I have gone through the impugned order. The learned Magistrate, it appears to me, had applied his mind in proper perspective. Signature in the cheque is not disputed. It is the case of the accused that the hand writing is not of his. The learned Magistrate in the impugned order takes note of the statement in cross examination of the complainant that the accused had brought a written cheque and had only signed in his presence. In these circumstances, the handwriting in which the other entries are made - other than the signature, pales into insignificance. I am satisfied that the learned Magistrate committed no error warranting invocation of the powers under Section 482 Cr.P.C to justify interference with that discretion exercised under Section 254(2) Cr.P.C.

4. This Crl.M.C is, in these circumstances, dismissed. But I make it clear that I have not intended to express any final opinion on merits now. I have only chosen to take the view that at this stage, the powers under Section 482 Cr.P.C do not

deserve to be invoked. The petitioner shall be entitled to raise all his contentions and if necessary, to challenge the impugned order also along with the final judgment.

R.BASANT
JUDGE

rtr/